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S O M E
CONSIDERATIONS

O N T H E
Necessity of an APPEAL, &c.

[Price Six-Pence.]

THE

CONSTITUTION

OF THE

REPUBLIC OF ALABAMA

[RECEIVED]

S O M E
CONSIDERATIONS
ON THE
Necessity of an APPEAL
IN THE
UNIVERSITY of *Cambridge.*



Erat in more apud Athenienses, ut contraria legum capita (quæ Antinomias vocant) quotannis a sex Viris examinarentur, & quæ reconciliari non poterant, proponerentur a populo, ut de illis certum aliquid statueretur. Ad quorum exemplum, ii, qui potestatem in singulis politiis legum condendarum habent, per triennium aut quinquennium aut prout videbitur, Antinomias retractant. Eæ autem a Viris, ad hoc delegatis, prius inspiciantur & præparentur, & demum comitiis exhibeantur; ut quod placuerit, per suffragia stabiliatur & figatur.

Lord BACON de Aug. Scient.

Chester

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S O M E
CONSIDERATIONS
ON THE
Necessity of an APPEAL, &c.

MY Intention is not to introduce what I have to say concerning Appeals, by any nice Inquiry into the Original of our Constitution ; for by what I am able to discern, it is not easily to be determined by the Statutes, in whom there is a decisive Sentence. Various Interests and Prejudices lead Men to different Determinations ; some affirm that the Judgment of the Chancellor, or Vice-Chancellor, is not decisive, but that the Senate have a Right of rejudging it : Others as boldly assert the Prerogative of the Chancellor,

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or Vice-Chancellor, and declare that his Sentence is not to be controverted : Both defend their Arguments and Opinions with Passages taken from the Statutes. As I am not sufficiently acquainted with our University Laws. I shall not pretend to say, in whom according to them this Right and Power is lodged, but shall attempt to prove that if the Vice-Chancellor has such an infinite unlimited Power, our Institution was faulty in its Origin, and if so ought to be amended ; for there can be no greater Mark of a most brutish Stupidity, than for Men to continue in an evil Way, because their Ancestors had brought them into it. Some one (I know him not) thinks it is unlawful to make Alterations in the University Laws, because Lord Chief Justice *Holt* judged it not reasonable to revoke or alter the Statutes of a Founder. As Members of particular Societies we are obliged by Gratitude and other Ties to acquiesce in their Statutes, as they were ordained by those who had a Right to dispose of their own,

own, and order it in whatsoever Manner pleased them best : But that there is the same Reason for us to abide by the ancient Laws of the University, which were not given us by any Founder, but received and confirmed by the Votes of the Senate, and till past by them had no real and true Force ; I could never find, however clear it may appear to our Author.

If the Power of instituting Laws be in the Body of the University, that of abrogating them must be necessarily. *Cujus enim est instituere, ejusdem est abrogare.* And if we have this Power, it is our Duty to exert it whenever the Good of the University requires it.

Nothing was ever so perfectly framed by the Invention of Man, as not to give some Testimony of Human Imbecillity, and frequently to stand in need of Reparations and Amendments. According to the best of their Knowledge did our Ancestors devise Laws which might be be-

neficial, and productive of the Good of the whole Body. But as Men they were subject to Errors, which if we are able to discover, we certainly ought to amend; and this cannot be called a groundless Opinion, since it is supported by the great Lord *Verulam*, who much wished for a Revival of the Statutes, that such as for various Reasons were defective might be changed or abolished. *Quandoquidem Academiarum instituta, plerunque originem traxerint a temporibus hisce nostris haud paulo obscurioribus et indoctioribus, eo magis convenit ut examini denuo subjiciantur.* And if those which regarded the Promotion of Learning might be amended, consequently those may which were intended for the Increase of Virtue and Discipline. And moreover to change or abrogate these our Laws is neither repugnant to Reason nor Religion; for they were not revealed to us by God, to annul whose Injunctions, is the highest and most presumptuous Sin; nor are they natural, which, having God for their Author, are eternal and unchangeable.

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They must then be positive ; I call those positive Laws which wise Legislators, considering the Nature, Manners, Disposition, Religion, &c. of any People, have instituted and enacted : But as by Time and other Circumstances, the Spirit and Character of a Nation are often changed, they necessarily require new Constitutions, and Ordinances ; therefore to vary the Laws according to present Emergencies, is one great Perfection of human Prudence ; it was by these Means, by thus adapting their Laws to the Temper of the People, by altering them occasionally, that the *Romans* rose to Power, Grandeur, and Dominion : And we find that Kingdoms have been glorious or infamous, respected or despised, as they have well or ill executed this principal Part of Policy. If therefore our Laws may be ranked among the positive, we may abolish any of them as occasion requires, in order to the Good of the whole Body, or else all the greatest and wisest Nations, instead of deserving Praise, ought to be stigmatised for their Folly and Arrogance. We have

done amiss in correcting the Errors of our savage Ancestors, the Laws and Practices of the ancient Druids, our Priests, and Legislators ; and as such must have had a Right inherent in them, to make their Laws eternal and indispensable. But we are told that it is not Length of Time, nor the Dignity of the Legislator, but Equity only that can commend Laws ; and when they are found to be unjust, they are deservedly condemned ; and if they are prejudicial to the Good of a Community, they cannot be just, and consequently not Laws, as St. *Augustine* teacheth, saying: *Mibi Lex esse non videtur, quæ justa non fuerit.* And to make them just and legitimate, they must not only be derived from the Law eternal ; *Nihil enim justum atque legitimum est quod non ab æterna lege sibi homines derivaverint* ; but be productive of the Virtue, Prosperity, and Happiness of the State for which they are devised, and also confirmed and continued by their Approbation : *Tum demum humanæ leges vim habent suam, cum fuerint non modo instituta,*

tae, sed etiam firmatae approbatione communitatis. But to say more on this Head is needless, for these Opposers of new Regulations acknowledge such a Power in the University, by their strenuous Attachment to the late ones: It is plain from thence, that they thought our Forefathers had not sufficiently provided against every Thing, which might happen in future Ages. They have therefore attempted to supply their Want of Foresight by adding some new Laws, or by giving greater Perfection to those which by them have been well invented. They framed their Laws according to the Times they lived in; but as by an infinite Variety of Accidents great Changes have happened since, it would be Folly in us obstinately to pursue the Plan laid down by them in every Part: As great almost as it would have been in the *Romans* not to have punished Parricide, because their wisest Legislators had not guarded against it; ours might not think an Appeal necessary, reckoning it impossible for them, in whom they had placed the Power of judging, to
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err. The *Romans* perceived the Errors of their Legislators, and amended them. It may perhaps happen hereafter, that our Judges may be liable to the Infirmities of Man, and err likewise: We ought therefore to guard against the Consequence of such Errors; for most Men are so inclined to Vice, and so subject to Passion, that they stand in need of Restraint in every Station; but more especially when they are intrusted with Power. But I should not have dwelt so long on a Subject, self-evident and confirmed by the wisest of all Ages; I should not have insisted on this Truth, had I not observed a Desire in that Writer to advance and propagate an Opinion quite contradictory to it. “ As therefore this
 “ Grace had a Tendency to alter the
 “ Constitution of the University, and to
 “ create Rights, not only unknown to
 “ the Statutes, but even contrary to and
 “ inconsistent with them; it was equally
 “ unfit to be offered on the Part of the
 “ Body, and to be received and counte-
 “ nanced by the Magistrate at their
 “ Head:

“ Head: And as it's Effect (if it legally
 “ could have had any) would have been,
 “ as the Inquirer alledged, a Diminu-
 “ tion of an Authority, which is only
 “ vested in the Vice-Chancellor, as the
 “ Representative and *locum tenens* of the
 “ Chancellor himself; let the Reader re-
 “ concile if he can, the persisting to of-
 “ fer, and even endeavouring to carry
 “ by a kind of Violence, such a Grace as
 “ this, with the Resolution taken at their
 “ first Meeting, to assert the Right of
 “ Appeal in such a Manner only as was
 “ consistent with the Statutes, and with
 “ the Deference and Respect due to his
 “ Grace the Chancellor. Here then we
 “ have in the first Place, a Jurisdiction
 “ residing in the University, considered
 “ as a Body without a Head, tho' a Head
 “ be as essential to such a Body Politick,
 “ as it is to the natural Body itself; and
 “ in the next, we have this Jurisdiction
 “ delegated to a particular Officer or Ser-
 “ vant, who, tho' like many other Ser-
 “ vants he governed his Masters, was in

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“ the End to be governed by them ; his
 “ Duty being to correct them in the first
 “ Place, and then to submit to their
 “ Correction for so doing. A Scheme
 “ of Discipline truly admirable !” I
 am afraid that from too great Eager-
 ness, he has fallen into an Error. If
 the Truth had been fairly examined by
 him, he must have been convinced of the
 contrary. The *Roman* Consuls were in-
 vested with the supreme Power by that
 People, to whom they were subject, and
 might be punished as well as others, if
 they transgressed the Laws ; and were
 obliged to give an Account of their Go-
 vernment. To follow the Doctrine of
 our Author is to give unlimited and un-
 controuled Power, such as is proper for
 Slaves only to be subject to, or a *Nero*,
 or *Caligula* to desire : According to his
 Notions, the Constitution of the *Roman*
 State was more consistent with Reason
 and Equity, when oppressed by *Tiberius*
 and *Domitian*, than when they were su-
 perior to their Magistrates, than when
 Dictators

Dictators and Consuls, upon resigning their Offices, appeared before their Tribunal and submitted their Actions to the Censure of a free and virtuous State. I could, if it were necessary, mention many more Instances to prove that the *Jus animadvertendi in magistratus*, is not unusual, or irrational, as he fancies: But an Attempt to persuade those, whose Prejudice determines them in an Opposition to whatever is right, and who are resolved against Conviction, is Time both idly and ill-employed. It is now proper to leave the invidious Office of a Censurer, which I should have been far from taking upon me, had I not thought it necessary to vindicate the Promoters of an Appeal, (whom this Writer has so boldly and unwarrantably reflected on as being desirous to destroy the Rights of the University) by shewing that their Actions are neither inconsistent with Religion, Reason, or the Usages of the wisest and greatest People that have been delivered down to us in History.

It may be said, perhaps, that there must be an absolute, unlimited, uncontrouled Power lodged somewhere in the University ; that by investing one Person with it, rather than many, we more surely aim at the Honour, Glory, and Happiness of this Society. When we can find that Man who is free from human Frailties, who has a Heart void of Passion, and Prejudice, whom this distinguished Superiority cannot intoxicate; whose Discretion, Prudence, and Judgment are equal to his Virtues. When we are assured that every Person who shall succeed, will be the same Prodigy in Nature ; I grant, it will be more conducive to the Welfare of this Body, to confer on one the most full and extended Power. But 'till we can be morally certain of such a Succession of annual Magistrates, I do affirm that it is absurd to ever elect any Man into an Office, for the Execution of any Part of which he shall not be accountable to his Constituents :

ents : And this Position is so consonant to Reason and Experience, that none but Men of ill Hearts, or weak Understandings can ever wish to oppose it. But by this Appeal the Prerogative, Rights, and Dignity of the Vice-Chancellor are in no wise diminished ; for if his Actions and Decisions are consistent with Virtue and Equity, he is supreme, unlimited and uncontrouled. When *Trajan* delivered his Sword to the Prefect, commanding him to use it for him if he governed well, and against him if he governed ill ; he thereby neither weakened nor endangered his Right ; since that Command could never be of any Force or Significance ; that delegated Power could never have been exerted 'till *Trajan* had first forfeited his Right to the *Roman* Empire, by his Unworthiness to reign. Though these Limitations only serve to strengthen his Power, while he uses it for those Ends, for which it was intrusted to him. When he ceases to do so, when he converts it to his own Views and Ends,

I defy any Man to assign Reasons for his not being subject to Limitations. For Justice, Equity, the Laws of God and Man, Reason and Self-preservation demand from us the Punishment of Injustice, the redressing Injuries, the relieving of the Oppressed: And whatever Community confer on a single Man (unless he is Infallible) the Privilege of interpreting and executing their Laws without Controul, do thereby resign and divest themselves of the Right which they naturally have, and are bound to exert in encouraging Virtue, suppressing Vice and seeing Justice duly administered. The Innocent may be accused by the Fraud and Treachery of his Accusers, the Judge may be deceived and pronounce that Condemnation, which must be final, as passed by an unlimited Authority; we may know and commiserate the State of the unhappy Person, but cannot redress it.

And I chuse to insist the longer on this Subject, as I am persuaded that some

Men of Judgment and Integrity, if they would candidly and impartially consider the Advantage which would accrue to the University by voting a Right of Appeal, that all Disputes would then cease, that all would unite in promoting good Order and Discipline, they would become more strenuous and zealous in asserting it, than they are now in opposing it. If they would consider that partial and prejudiced Vice-Chancellors can only suffer; that the Just, if ever their Sentence should be canvassed, would have the Pleasure and Satisfaction of hearing it approved by the unanimous Voice of the Senate. If this is any Hardship, any Injury, I do not desire them to favour my Proposal; but till they can satisfy the World that it is, it is their Duty to promote such an Appeal, as they are Members of an University, whose Good and Prosperity they are obliged to advance as much as is in their Powers, by the most solemn Ties; and as the Heads and Masters of Colleges have been censured by some
for

for Rage, Prejudice and Violence in passing their Sentences; I think they cannot give a greater Proof of the Integrity and Uprightness of their Intentions, than by submitting to an Appeal; for if their Actions shall upon the Examination of the Senate be found blameless, they will then be cleared from those many Aspersions and Censures which have been passed on them both in publick and private:

*Let them submit their Actions to the publick Censure,
And stand the Judgment of a Roman Senate.*

CÆSAR would not, and the Reason is plain: I will not attribute their Refusal to the same, but to too tenacious an Adherence to what they think their Right. But granting that according to the University Statutes, there is no Appeal; why should any Set of Men, if they have the Good of their Community truly at Heart, be desirous of retaining to themselves a Privilege which must be destructive and
prejudicial

prejudicial to it: No virtuous Man can wish to oppose a Law which may restrain Evil, but never can prejudice himself, since the Integrity of his Life and Actions will make him in every respect superior to it: For those only are offended at good Laws, who are most likely to break them, who either have some Inclination already to do Ill, or fear that they may have. They are not like that Ancient, who was glad to have his own Inclination to Virtue approved of and even enforced by Law; who was willing to be under a Necessity of doing and acting what was Right.

I shall now endeavour to evince the Necessity of an Appeal; as to prove that Necessity, it may be superfluous to mention the many Ties we are under to advance the Good and Prosperity of this Body, that we are enjoined to it by the Laws of God, Nature and Reason, that we have the additional Obligation of an Oath: That the perpetual Jarrings we hear

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every

every Day, that we are divided into Fac-
tions, that Animosities and Envyings rage
among us, that all the Disorders we see
or fear are the sad Effects of these Dis-
putes ; I say that to mention these Rea-
sons for an unanimous Concurrence in
voting an Appeal, are needless, as I be-
lieve every Member of the Senate, every
Governor in this Body is sufficiently sen-
sible of the Duties they owe to God as
Men, to us as Members of this Society ;
and that nothing can discharge them from
these Obligations, as the Heads know
the Ends for which they were elected,
that these Places of Trust were not made
for their Interest, Profit, and Advantage,
but for the Good of the Governed : That
it is therefore their Duty to promote the
common Good, not to increase their own
Power by destroying it : That the Senate
is the Guardian of our Security, designed
to restrain the Practices of all those who
shall either wilfully, or ignorantly attempt
to frustrate the Intentions of our Ance-
stors : And that every Person, who
through

through Fear, Prejudice, or Indolence, opposes or neglects to co-operate in advancing the Welfare of the University, is highly guilty.

If our Ancestors did not grant an Appeal, they erred in the Means for producing the Good which they intended; the Methods that they took to accomplish it, were not answerable to their Intents: If therefore we will be just to them, it will become us rather to pursue those, than their Ordinances. If the Glory and Felicity of the *Athenian* State was the sole View and Aim of *Draco*, when he enacted Laws wrote in Blood, it was by abrogating them that *Solon* fulfilled his Will; for if they were not productive of the desired Effects, they were repugnant to what he proposed, and by annulling them *Solon* accomplished what *Draco* intended. If the *Spartans* in vesting their Kings with unlimited Power, designed the Permanency and Stability of their Government; by permitting a Diminu-

tion of it, by assenting to the Creation of Ephori, *Theopompus* completed what they had begun; by using Means entirely contrary, he produced the Good that his Ancestors so zealously, but wrongly laboured for. If *Solon*, if *Theopompus* are blameable for attending more to the Will, than Words of their Predecessors; let us avoid so fatal an Error, let us religiously adhere to every ancient Ordinance, whether just or unjust, productive of our Happiness or Misery. Why then should I enumerate the wise, valiant, and happy People, who judged Appeals the Fundamental of their Liberties. The Recollection of their Felicity, and the chief Cause of it, will but give fresh Pungency to those Grievs, additional Strength to those Hardships, which we can, but dare not alleviate, as they undesignedly were imposed on us by our Ancestors. Yet surely our Minds cannot be so blinded by an idle preposterous Superstition. I should not thus have lengthned this Digression, had I not observed a too easy

Tenderness

Tendernefs and filly Attachment in some Men, to particular Statutes, whose sole Merit is their Antiquity.

In the Infancy of *Rome* her Kings had absolute Power, but when by an innate Propensity to virtuous and glorious Achievements, she had enlarged her Territories, Men soon became more jealous of their Rights; they immediately felt the fatal Consequences of unlimited Monarchy; they ejected the lewd impious *Tarquins*, and vested the Government in Consuls, Decemviri, and Dictators: But perceiving that the most Wise and Virtuous could not arrive at a State of moral Perfection, that the Lust of Dominion strangely and wonderfully insinuates itself into the Heart of Man, they thought it necessary to reserve to themselves the Right of judging, whether a just and proper Use was made of the Power entrusted, and enacted this salutary Law: *Magistratus nec obedientem & noxium civem multa, vinculis verberibusve coerceto,*

ceto, ni par majorve potestas, populusve probibessit, ad quos provocatio esto; which Law was thrice passed in the Space of two hundred and ten Years. *Eodem anno M. Valerius consul de provocatione legem tulit, diligentius sanctam. Tertio ea tum post reges exactos lata est, semper a familia eadem. Causam renovandæ sæpius haud aliam fuisse reor, quam quod plus paucorum opes, quam libertas plebis poterant.* They also appointed Tribunes as Protectors of their Rights, whose Office it was to check and restrain the unbounded Desires of those, whom Rage and Ambition rendered impatient of any Restraint. When *Rome* decayed, when *Virtue*, *Liberty*, and her Fondness for it, decreased together, she became negligent of her Privileges, lost her Prerogative of Appeal, submitted to the arbitrary Will of profligate abandoned Tyrants. By the *Athenian* Laws, any Man might appeal from the Determination of the Judge to the People; if through Negligence, want of Honour, *Virtue*,
and

and Integrity, they had ill executed their Duty, upon resigning their Offices, any one might accuse them. When these Laws had their full Force, when their Magistrates and Princes were deterred from Oppression and Injustice, by the Dread of Punishment, she was the Glory and Pride of *Greece*, distinguished for her Valour and Humanity. *Solon*, who had studied Men, their Tempers, Manners, and Dispositions, was too well acquainted with the Corruption of human Nature, to expect Justice from those who fear no Punishment, if guilty of Injustice. To amend therefore this Defect in the Heart, to force Men to the Practice of Virtue and Honesty in the Execution of their Offices, he enacted these Laws, and granted the Privilege of appealing. The rough, unpolished Valour of the *Spartan*, required a Constitution differently modelled in many Respects from the *Athenian*, yet in that, the Power was ultimately lodged in the People, to whom every Citizen might appeal, to whom

whom their Kings and Magistrates were responsible for their Actions. To this nice Distribution of Power, this Regard to the Preservation of their Liberties, the *Spartans* owed the Duration, Happiness, and Prosperity of the Commonwealth. We find that, in the *Jewish* Institution, Part of the Power was entrusted to the Sanhedrin, without whose Advice and Assent the King could do nothing. And *Zedekiah* acknowledged such a Power to be inherent in them: *Then Zedekiah the King said, Behold, he is in your Hand: for the King is not he that can do any thing against you, Jer. xxxviii.* And *Maimonides* says, that they judged and submitted to Judgment as the Law commanded. Many more Examples might be mentioned to illustrate this great Truth, that the Good of the Governed is the Intention of every just Institution, that the Good proposed is their Liberty and Security, that all Nations who have been most jealous of their natural Liberty, have reserved to themselves the Right of Appeal,

Appeal, as the best and only Preservative of it; that our Ancestors therefore erred in not granting one; that we should correct this Error; that the Heads should be more particularly strenuous in promoting so public a Good, as they have had many Accusations laid to their Charge, which this only can prove the Falschhood, or attone for the Truth, of.

Those who are fond of Cavilling, may perhaps object to my frequent References to the Laws and Customs of the Ancients, as if they did not in the least affect the present Times; much less the Body I address myself to, and the Cause I labour to defend. To them I answer, that for a Society who make Learning and Humanity their peculiar Study, to be directed in modelling their Laws by Men, who were wise and famous in their Generations, cannot but be an Honour to it. With Man born in Liberty and Freedom, the Customs of the most Valiant, Learned, and the best polish'd Nations

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tions cannot but have great Weight and Authority. Our Labour and Toil in studying ancient Policy, Manners, and Tempers would be all fruitless, our Learning would be Vanity in the most literal Sense, if the avoiding the Errors, and imitating the Perfections of their Constitutions, is idle and absurd.

Many Reflections might be added to these, I might mention our being all Members (when removed from the University) of a free Constitution founded on and modelled from the Perfections of all others, and in the Management and Direction of which, many of this Society will hereafter be principal Actors. That our Government should therefore be an Epitome of whatever is Good and Great, of every Perfection in Ancient and Modern, in order to the better fitting and preparing them for those noble Scenes of Life, in which they are to be engaged; we should then send them forth principled in Virtue and Policy: By seeing and
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enjoying in their tender and younger Age, the happy Effects of a well-regulated Univerfity, they would in their riper and more advanced Years become ftedfaft Pillars of our State, zealous Affertors of our Liberties.

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existing in their minds and hearts
Agas, the happy lot of a well-
lived Union, they would in their
per and more than I can become
believe them to be true as Ag-
lives, and I am

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